

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2018 DEC -4 AM 11:29

BY 
SHERIFF CLERK

CHERYL ROUSSEAU AND
PETER ROUSSEAU,
Plaintiffs

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v.)
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JOHN BOYD COATES, III, M.D.
AND CENTRAL VERMONT
MEDICAL CENTER, INC.,
Defendants

Docket No. 2:18-cv-205

COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiffs Cheryl Rousseau and Peter Rousseau, by their attorneys, Gravel & Shea PC, hereby complain of Defendants and allege as follows:

Introduction

1. This is an action for medical negligence, failure to obtain informed consent, fraud, battery, negligent infliction of emotional distress, intentional infliction of emotional distress, breach of contract, Consumer Protection Act violation and negligent supervision arising from John Boyd Coates, III, M.D. ("Dr. Coates"), while an agent of the entity now known as Central Vermont Medical Center, Inc. ("CVMC"), choosing to insert his own genetic material into Cheryl Rousseau and choosing to inseminate Cheryl Rousseau with his own genetic material after representing that he would inseminate Cheryl Rousseau using donor genetic material of an unnamed medical student who resembled her husband, Peter Rousseau, and who met specific physical criteria (the "Fraudulent Insemination").

Parties and Others

2. Plaintiffs Cheryl Rousseau and Peter Rousseau are husband and wife. They are citizens of the State of Florida.

3. Defendant John Boyd Coates, III, M.D., is a citizen of the State of Vermont. Defendant Dr. Coates is a Vermont licensed medical doctor. At the time of the Fraudulent Insemination, Defendant Dr. Coates practiced as an obstetrician/gynecologist in central Vermont and was an attending physician at what was, at the time, Central Vermont Hospital, Inc. ("CVH"), Berlin, Vermont.

4. Defendant Central Vermont Medical Center, Inc. is a Vermont non-profit corporation. It was known as Central Vermont Hospital, Inc. at the time of the Fraudulent Insemination. Central Vermont Hospital, Inc. was the predecessor in interest to Central Vermont Medical Center, Inc., which was incorporated in 1984.

5. Barbara Mary Frances Rousseau, now known as Barbara Mary Frances Gordon, was born on December 27, 1977 at CVH to Plaintiff Cheryl Rousseau as a result of Defendant Dr. Coates' Fraudulent Insemination.

Jurisdiction

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, diversity of citizenship, there being at least \$75,000 in controversy, exclusive of interest and costs.

Facts

7. Plaintiffs were married on October 12, 1974.

8. Plaintiffs both had children from earlier marriages and decided that they would like to have a child together.

9. However, before meeting Plaintiff Cheryl Rousseau, Plaintiff Peter Rousseau had undergone a vasectomy. Plaintiff Peter Rousseau explored whether it would be possible to reverse his vasectomy and learned that it was not medically feasible.

10. Plaintiff Cheryl Rousseau met with Defendant Dr. Coates and explained her desire to conceive a child with her husband Plaintiff Peter Rousseau. Defendant Dr. Coates, as a professional service, agreed to artificially inseminate Plaintiff Cheryl Rousseau using donor genetic material (the "Procedure").

11. Defendant Dr. Coates represented to Plaintiffs that he would obtain donor genetic material from an unnamed medical student who resembled Plaintiff Peter Rousseau, who met specific characteristics that Plaintiff Cheryl Rousseau required and who had been tested for purposes of being a donor of genetic material for use in donor insemination (the "Representation").

12. The Representation was false and known by Defendant Dr. Coates to be false when he made the Representation.

13. Plaintiffs believed and relied upon the Representation made by Defendant Dr. Coates.

14. Defendant Dr. Coates required that Plaintiff Peter Rousseau retain an attorney to draw up a contract confirming that Plaintiff Peter Rousseau would adopt any child born of the Procedure.

15. Plaintiff Peter Rousseau complied with Defendant Dr. Coates' requirement, obtained the services of an attorney to draw up the contract, executed it and had it delivered to Defendant Dr. Coates.

16. Defendant Dr. Coates required that Plaintiff Cheryl Rousseau undergo testing in advance of the Procedure at CVH. Plaintiff complied with this request.

17. Defendant Dr. Coates performed the Procedure on Plaintiff Cheryl Rousseau twice at CVH.

18. Defendant Dr. Coates performed the Procedure in March 1977 at CVH. However, instead of inserting the genetic material pursuant to the Representation, Defendant Dr. Coates inserted his own genetic material into Plaintiff Cheryl Rousseau so as to impregnate her with his own genetic material and thereby be the biological father of her child.

19. Had Plaintiffs known that Defendant Dr. Coates would use his own genetic material to insert into Plaintiff Cheryl Rousseau and to inseminate Plaintiff Cheryl Rousseau they would not have agreed to the Procedure.

20. In May 1977, Plaintiff Cheryl Rousseau learned that she was pregnant.

21. Defendant Dr. Coates personally delivered Barbara Mary Frances Rousseau by cesarean section on December 27, 1977.

22. Defendant Dr. Coates continued to act as Plaintiff Cheryl Rousseau's obstetrician and gynecologist for one year after the birth of Barbara Mary Frances Rousseau.

23. Defendant Dr. Coates knew that the child born as Barbara Mary Frances Rousseau was his biological daughter but chose to never disclose this fact to Plaintiffs nor to Barbara Mary Frances Gordon.

24. To this day, Defendant Dr. Coates denies that he inserted his own genetic material into Plaintiff Cheryl Rousseau and that he is the genetic father of Barbara Mary Frances Gordon.

25. Defendant Dr. Coates fraudulently and knowingly concealed from Plaintiffs Cheryl Rousseau and Peter Rousseau his breach of the terms of the Representation and his choice to use his own genetic material in the Procedure.

26. Defendant Dr. Coates' choice to not disclose to Plaintiffs that he had chosen to use his own genetic material to impregnate Plaintiff Cheryl Rousseau remained a secret until October 2018, when Barbara Mary Frances Gordon used DNA testing in an effort to learn more information about her biological father. In doing research using the results of DNA testing, Barbara Mary Frances Gordon determined that Defendant Dr. Coates was her genetic father.

COUNT I
Medical Negligence

27. Defendant Dr. Coates was a licensed medical doctor in the State of Vermont providing medical treatment that required a degree of medical skill and professional judgment.

28. Defendant Dr. Coates had a duty to Plaintiffs Cheryl Rousseau and Peter Rousseau to provide health care consistent with the degree of knowledge or skill possessed or the degree of care ordinarily exercised by a reasonably skillful, careful and prudent health care professional engaged in a similar practice under the same or similar circumstances whether or not within the State of Vermont.

29. Defendant Dr. Coates failed to exercise this required degree of care when he chose to insert his own genetic material into Plaintiff Cheryl Rousseau and to inseminate Plaintiff Cheryl Rousseau with his own genetic material after making the Representation.

30. As a proximate result of Defendant Dr. Coates' failure to exercise the requisite degree of care, Plaintiffs Cheryl Rousseau and Peter Rousseau suffered injuries that they would not otherwise have incurred.

COUNT II
Failure to Obtain Informed Consent

31. In providing professional medical treatment, Defendant Dr. Coates failed to disclose to Plaintiffs Cheryl Rousseau and Peter Rousseau that he was choosing to breach the terms of the Representation and was choosing to use his own genetic material to inseminate Plaintiff Cheryl Rousseau during the Procedure.

32. Defendant Dr. Coates' use of his own genetic material prevented Plaintiffs Cheryl Rousseau and Peter Rousseau from making a knowledgeable evaluation of the reasonably foreseeable risks associated with this Procedure.

33. A reasonable medical professional in like or similar circumstances would have disclosed that he was using his own genetic material to inseminate the patient and would not have performed the Procedure.

34. Defendant Dr. Coates neither sought nor obtained Plaintiffs' consent to insert his own genetic material into Plaintiff Cheryl Rousseau or to inseminate Plaintiff Cheryl Rousseau with his own genetic material.

35. Defendant Dr. Coates withheld accurate information as to the origins of the genetic material that he chose to insert into Plaintiff Cheryl Rousseau as part of the Procedure.

36. Defendant Dr. Coates chose to withhold the information as to the origin of the genetic material he chose to insert into Plaintiff Cheryl Rousseau despite Plaintiff Cheryl Rousseau's specific and reasonable requests for genetic material that met specific criteria.

37. Neither Plaintiffs Cheryl Rousseau and Peter Rousseau nor a reasonable person in their circumstances would have consented to the Procedure had Defendant Dr. Coates not chosen to provide them with accurate and truthful information.

COUNT III
Fraud

38. When Defendant Dr. Coates made the Representation to Plaintiffs Cheryl Rousseau and Peter Rousseau, Defendant Dr. Coates knew that Plaintiffs Cheryl Rousseau and Peter Rousseau would not have allowed him to go forward with the Procedure unless he made the Representation.

39. Plaintiffs would not have consented to the Procedure had Defendant Dr. Coates informed them that he was choosing to breach the terms of the Representation and instead was choosing to insert his own genetic material into Plaintiff Cheryl Rousseau, to inseminate Plaintiff Cheryl Rousseau with his own genetic material and was choosing to father a child through Plaintiff Cheryl Rousseau.

40. Defendant Dr. Coates' Representation was false and known by him to be false when made.

41. Defendant Dr. Coates intended and knew that Plaintiffs Cheryl Rousseau and Peter Rousseau would rely on his false Representation in agreeing to go forward with the Procedure.

42. Plaintiffs Cheryl Rousseau and Peter Rousseau did not know that Defendant Dr. Coates' Representation was false, and justifiably relied upon and trusted Defendant's Representation as a condition of Plaintiff Cheryl Rousseau undergoing the Procedure.

COUNT IV
Battery

43. Defendant Dr. Coates intended to insert his own genetic material into Plaintiff Cheryl Rousseau and intended to inseminate Plaintiff Cheryl Rousseau with his own genetic material during the Procedure.

44. Plaintiff Cheryl Rousseau did not consent to Defendant Dr. Coates inserting his own genetic material into her or to Defendant Dr. Coates inseminating her with his own genetic material.

45. Defendant Dr. Coates' choice to insert his own genetic material into Plaintiff Cheryl Rousseau and his choice to inseminate Plaintiff Cheryl Rousseau with his own genetic material was harmful, offensive and constituted a battery upon Plaintiff Cheryl Rousseau.

COUNT V
Negligent Infliction of Emotional Distress

46. Defendant Dr. Coates had a professional relationship with Plaintiffs Cheryl Rousseau and Peter Rousseau and had undertaken an obligation to Plaintiffs Cheryl Rousseau and Peter Rousseau of a nature that necessarily implicated the well-being of Plaintiffs Cheryl Rousseau and Peter Rousseau.

47. Plaintiff Cheryl Rousseau suffered a physical impact from the external force exerted by Defendant Dr. Coates.

48. There was an especially likely risk that Defendant Dr. Coates' negligent conduct would cause serious emotional distress to the Plaintiffs Cheryl Rousseau and Peter Rousseau.

49. The negligent actions and omissions of Defendant Dr. Coates as set out in this Complaint in breach of his obligation to the Plaintiffs in fact caused Plaintiffs physical impact which led to serious emotional distress.

COUNT VI
Intentional Infliction of Emotional Distress

50. The conduct of Defendant Dr. Coates as set out in this Complaint was outrageous.

51. The conduct of Defendant Dr. Coates was intentional.

52. The conduct of Defendant Dr. Coates caused Plaintiffs Cheryl Rousseau and Peter Rousseau severe emotional distress.

COUNT VII
Breach of Contract

53. Defendant Dr. Coates offered to enter into a contract with Cheryl Rousseau and Peter Rousseau under the terms of the Representation.

54. Plaintiffs Cheryl Rousseau and Peter Rousseau accepted Defendant Dr. Coates' offer to perform the Procedure pursuant to the Representation, thus creating a contract (the "Contract") pursuant to the terms of the Representation.

55. Per the Contract, Plaintiffs Cheryl Rousseau and Peter Rousseau paid Defendant Dr. Coates for the donor genetic material pursuant to the Representation and for his professional services in performing the Procedure.

56. Defendant Dr. Coates breached the Contract with Plaintiffs by choosing to use his own genetic material instead of adhering to the Representation.

57. Defendant Dr. Coates breached the Contract with Plaintiffs Cheryl Rousseau and Peter Rousseau by choosing to insert his own genetic material into Plaintiff Cheryl Rousseau and by inseminating Plaintiff Cheryl Rousseau with his own genetic material during the Procedure.

COUNT VIII
Consumer Protection Act Violation

58. Defendant Dr. Coates engaged in unfair and deceptive acts and practices in the conduct of his trade and in commerce: by making a false Representation to Plaintiffs Cheryl Rousseau and Peter Rousseau; by leading Plaintiffs Cheryl Rousseau and Peter Rousseau to believe that he would adhere to the Representation; by choosing not to inform Plaintiffs that he

would insert his own genetic material into Plaintiff Cheryl Rousseau; and by choosing to inseminate Plaintiff Cheryl Rousseau during the Procedure with his own genetic material.

59. This misrepresentation was material.

60. Plaintiffs suffered damages as a result of this material misrepresentation.

COUNT IX
Negligent Supervision

61. Defendant CVMC provided medical services to patients in substantial part through the use of attending physicians and other physicians ("Physicians") with whom it permitted and contracted to use its facilities (this "Arrangement").

62. The Physicians who were part of this Arrangement were agents and employees of Defendant CVMC.

63. Through this Arrangement, Defendant CVMC led patients to believe that the physicians who used its facilities to deliver patient care and services were employees or agents of Defendant CVMC.

64. Defendant CVMC's patients, including Plaintiffs, relied upon this Arrangement in deciding to use the services of physicians at Defendant CVMC.

65. Defendant CVMC had a duty to supervise the physicians who provided services at and through Defendant CVMC to ensure that the Physicians who were providing services met applicable standards of care and were not otherwise committing acts of the nature complained of in the Complaint.

66. Defendant CVMC breached its duty of supervision as it relates to the conduct of Defendant Dr. Coates as set out in this Complaint.

67. Defendant CVMC's breach of its duty to adequately supervise Defendant Dr. Coates enabled Defendant to insert his own genetic material into Plaintiff Cheryl Rousseau and to inseminate Plaintiff Cheryl Rousseau with his own genetic material.

68. Plaintiffs were injured as a result of Defendant CVMC's failure to supervise Defendant Dr. Coates.

69. If Defendant CVMC had supervised the conduct of Defendant Dr. Coates, Defendant Dr. Coates would not have been able to breach the terms of the Representation and to instead use his own genetic material to insert into Plaintiff Cheryl Rousseau, to inseminate Plaintiff Cheryl Rousseau during the Procedure with his own genetic material and would not have been able to father a child by Plaintiff Cheryl Rousseau.

Respondeat Superior

70. Defendant Dr. Coates was operating in the course and scope of his job duties as an employee or agent of CVMC when he committed the acts and omissions complained of herein.

71. CVMC is liable for Defendant Dr. Coates' actions as set out in this Complaint.

Fraudulent Concealment

72. Plaintiffs Cheryl Rousseau and Peter Rousseau are persons entitled to bring the action set out in this Complaint but were prevented from doing so until October 2018 by the fraudulent concealment of these causes of action by Defendant Dr. Coates.

Compensatory Damages

73. The actions and inactions of Defendants Dr. Coates and CVMC as set out in this Complaint proximately caused damage to the Plaintiffs for which they are entitled to compensation.

Exemplary Damages

74. The actions of Defendant Dr. Coates as described in this Complaint were done by Defendant Dr. Coates recklessly or wantonly without regard for the rights of Plaintiffs Cheryl Rousseau and Peter Rousseau, were outrageously reprehensible, had the character of outrage frequently associated with a crime and were done with malice, thereby entitling Plaintiffs to exemplary damages.

WHEREFORE Plaintiffs demand compensatory damages in excess of \$75,000, the minimum jurisdictional amount of this Court, and exemplary damages in an amount to be determined by the jury, together with interest, attorneys' fees and such other relief as may be available to them.

JURY DEMAND

Plaintiff demands trial by jury of all issues so triable.

Dated: Burlington, Vermont
December 4, 2018

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